

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SHAWN DRUMGOLD,

Plaintiff

v.

TIMOTHY CALLAHAN,
FRANCIS M. ROACHE,
PAUL MURPHY, RICHARD WALSH,
and THE CITY OF BOSTON,

Defendant

C.A. NO.: 04-11193NG

**DEFENDANTS' MOTION IN LIMINE TO EXCLUDE REFERENCE TO OR
ASSERTION OF ACTUAL INNOCENCE**

Defendants Walsh, Callahan, Francis M. Roache and the City of Boston (collectively "the Defendants") hereby move *in limine* to exclude from the trial of this action any reference or assertion that Plaintiff is actually innocent of the murder of Tiffany Moore.

As grounds therefore, Defendants state that, although Plaintiff was granted a new trial by the Superior Court and the District Attorney's Office entered a *nolle prosequi* of the charges, citing the "interests of justice" and need for "finality," both the District Attorney and the Court emphasized that these findings did not constitute exoneration of the Plaintiff of the criminal charges for which he was convicted in 1989. Defendants refer to the exhibits filed in support of their Motion in Limine to preclude introduction of the District Attorney's Post-Hearing Memorandum and the Order of the Superior Court. Thus, unlike a case where DNA testing or other scientific evidence has conclusively established that an individual was actually innocent of the crime for which he was

convicted, here, the Plaintiff's guilt or innocence remains an open issue for consideration by the jury (especially in its calculation of damages, should the jury reach that issue).

See People v. Chiappa, 368 N.E.2d 925 ("...guilt of the defendant is absolved by pardon ... where the same states that it is based upon the innocence of the defendant") (emphasis added).

For the foregoing reasons, Defendants request that the Court preclude counsel from alleging Plaintiff's innocence in their opening or remarks to the jury, and further preclude the Plaintiff from asserting his innocence unless and until the issue of damages is presented¹.

Defendant,
RICHARD WALSH,

By his attorney,

/s/ Hugh R. Curran
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Defendant,
TIMOTHY CALLAHAN,

By his attorney,

/s/ Mary Jo Harris
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¹ Defendants have filed a Motion for bifurcation, seeking to separate trial on liability from the issue of damages, in order to avoid the prejudice and confusion of issues that would accompany the presentation of such evidence before the jury determines whether Plaintiff prevails on his constitutional claims.

**Defendants,
CITY OF BOSTON AND
FRANCIS M. ROACHE,**

By their attorney,

/s/ John P. Roache

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 28th day of January, 2008, I electronically filed with within document with the Clerk of the United States District Court for the District of Massachusetts, using the CM/ECF System. The following participants have received notice electronically:

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/s/ Mary Jo Harris